

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

RECEIVED

JUL -3 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

CC Docket No. 87-313

CC Docket No. 93-197

DOCKET FILE COPY ORIGINAL

In The Matter of )

Policy and Rules Concerning )  
Rates for Dominant Carriers )

Revisions to Price Cap Rules )  
for AT&T )

**COMMENTS OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel, hereby submits its Comments on the rule changes proposed and the policy determinations tentatively adopted by the Commission in the Further Notice of Proposed Rulemaking ("FNPRM") in the captioned proceedings.

**I.**

**INTRODUCTION**

TRA was created to foster and promote the interests of entities engaged in the resale of domestic interexchange and international telecommunications services. Employing the transmission, and often the switching, capabilities of underlying facilities-based network providers, the resale carriers comprising TRA create "virtual networks" to serve generally small and mid-sized commercial, as well as residential, customers, providing such entities and individuals with access to long distance rates otherwise available only to much larger users. TRA

No. of Copies rec'd 044  
List A B C D E

resale carrier members also offer small and mid-sized commercial customers enhanced, value-added products and services, often including sophisticated billing options, as well as personalized customer support functions, that are generally not provided to low volume users.

TRA's members -- more than 300 resale carriers and their underlying service and product suppliers<sup>1</sup> -- range from emerging, high-growth companies to well-established, publicly-traded corporations.<sup>2</sup> They represent far and away the fastest growing sector of the long distance industry. Already populated by more than 1,000 carriers, the interexchange resale community currently serves millions of customers, representing tens of billions of minutes of long distance traffic, and generates annual revenues in the billions of dollars. And the market share of the interexchange resale industry is nonetheless forecast to double in size by the end of the century.<sup>3</sup>

TRA was chartered, among other things, to represent the views of its members before the Commission, other federal and state regulatory agencies and departments, legislative

---

<sup>1</sup> TRA also numbers among its members facilities-based interexchange carriers, foreign telecommunications administrations and carriers, Regional Bell Operating Companies, competitive access providers, and commercial mobile radio service ("CMRS") providers and resellers of CMRS.

<sup>2</sup> Most of TRA's resale carrier members are not yet a decade old. Their emergence and dramatic growth over the past five to ten years has produced thousands of new jobs and myriad new business opportunities. In addition, TRA's resale carrier members have facilitated the growth and development of second- and third-tier facilities-based long distance providers by providing an extended, indirect marketing arm for their services, thereby further promoting economic growth and development. And perhaps most critically, by providing cost-effective, high quality telecommunications services to the small business community, TRA's resale carrier members have helped, and are helping, other small and mid-sized companies to grow their businesses and generate new jobs.

<sup>3</sup> As one financial analyst suggested in a recent Wall Street Journal article on the long distance resale industry, "[w]e don't see anything on the horizon that's going to slow this industry down." Thomas, E., "Nibbling at the Edges," The Wall Street Journal, Vol. CCXXV, No. 54, March 20, 1995.

bodies and federal and state courts. The Association is filing comments here in furtherance of that mandate and to provide the Commission with a unique perspective on the issues at hand. Unlike most likely commenters who will be either consumers or competitors of AT&T, TRA members are both, and hence have experience with the carrier both as a supplier and as a competing provider.<sup>4</sup>

In the FNPRM, the Commission has requested public comment on a variety of proposed modifications to its price cap system and the regulation thereunder of AT&T Corporation's ("AT&T") residential services. Most notably, the Commission has sought comment on its tentative conclusion that AT&T's promotional tariffs and Optional Calling Plans ("OCPs") should remain subject to price cap regulation. The Commission has further sought guidance as to the manner in which "self-selected" promotions and OCPs, and other AT&T residential services, should be classified, regulated and priced. In doing, the Commission has emphasized that any and all recommended actions should further its "primary goals in applying price cap regulation to AT&T" of "ensuring just and reasonable long distance rates for ratepayers, without unreasonable discrimination, as well as promoting the universal availability of such reasonably priced service," while "foster[ing] greater competitiveness in the interexchange market and . . . permit [ting] . . . the remov[al of] more of AT&T's services from price cap regulation." FNPRM at ¶34.

---

<sup>4</sup> The large majority of TRA's resale carrier members continue to purchase, directly or indirectly through larger resale carriers, and resell AT&T telecommunications services, either exclusively or in conjunction with the services of other facilities-based providers. As providers of long distance telecommunications services, TRA members also constitute a substantial percentage of AT&T's direct competitors. Included among TRA's members are thus some of AT&T's largest customers and some of AT&T's smallest and/or most aggressive competitors.

## II.

### ARGUMENT

Set forth below are TRA's positions (and the rationales therefor) on those matters raised in the FNPRM which are of direct and immediate consequence to the long distance resale community:

**Retention of Price Caps Regulation for Promotional Tariffs and OCPs:** TRA endorses the Commission view that the public interest would be best served by retaining price cap regulation of AT&T promotional tariffs and OCPs. As set forth in great detail in TRA's recently-filed opposition (and reply) to AT&T's request to be reclassified as a nondominant carrier<sup>5</sup>, TRA members purchase services from, and vigorously compete with, AT&T in the marketplace and have experienced first-hand not only the tremendous market power possessed by AT&T, but the carrier's willingness to exercise that power in a hostile, abusive and often predatory manner. Accordingly, even though TRA believes that market forces are generally superior to regulation in promoting the efficient provision of diverse and affordable telecommunications products and services, it is extremely wary of proposals to further relax the remaining (relatively mild) regulatory oversight of and restrictions on AT&T.

**Uniform Regulatory Treatment and Classification as "Alternative Pricing Plans ('AAPs') of 'Self-Selected' Promotions and OCP :** TRA agrees with the Commission that "self-selected"

---

<sup>5</sup> Comment of the Telecommunications Resellers Association (filed June 9, 1995) and Reply Comments of the Telecommunications Resellers Association (filed June 30, 1995) in CC Docket No. 79-252, Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor.

promotions and OCPs both represent "self-selected" discounted alternatives to domestic MTS or other price cap services provided under basic schedule rates and hence may appropriately be treated in the same manner under price cap regulation. Establishment of a new regulatory category -- *i.e.*, Alternative Pricing Plans -- is thus warranted.

**Inclusion of AAPs with Domestic 'Day,' 'Evening,' and 'Night/Weekend' MTS Services in a Single Service Category:** TRA opposes the integration of domestic "day," "evening," and "night/weekend" MTS services with AAPs in a single Basket 1 service category. Such integration of basic service offerings and AAPs would afford AT&T undue pricing flexibility, allowing it to strategically manipulate rates to the detriment of less sophisticated, less knowledgeable and/or lower volume residential users and of smaller competitors who are vulnerable to predatory tactics. The four percent upper limit the NPRM proposes to place on the single domestic MTS service band would be rendered meaningless if AAPs were included in that band; increases in basic schedule rates would invariably be offset by AAPs in a manner which ensured that the four percent limit would never be achieved. Similarly, whatever percentage floor might be imposed on the single domestic service category could readily be avoided by joint manipulation of AAPs and basic schedule rates. The rate gap between the knowledgeable and the uninformed and the sophisticated and the naive residential consumer would continue to grow and the avenues for predation would multiply. TRA submits that the Commission's price cap objectives would be better served by creating instead a separate service category for AAPs and subjecting this new category and the domestic MTS category to separate percentage rate ceilings and floors. While TRA does not disagree with the Commission that AAPs and domestic MTS

services are reasonably substitutable, offsetting considerations warrant their separate categorization.

**Increase to Fifteen Percent the Current Five Percent Floor on Price Decreases Within Basket 1**

**Service Categories:** TRA acknowledges that in proposing to expand the current five percent floor on price decreases within Basket 1 service categories, the Commission is attempting to balance against the fear of predatory conduct by AT&T, the benefits that might be derived if AT&T were afforded more flexibility to implement rate decreases. TRA certainly does not wish to deny the consuming public potential AT&T rate reductions; neither does it wish to deprive the consuming public of the benefits of interexchange competition by unleashing AT&T to engage in predatory behavior. As outlined in TRA's recently-filed opposition to AT&T's request to be reclassified as a nondominant carrier,<sup>6</sup> AT&T has demonstrated an historical propensity to act in a predatory manner toward resale carriers. Accordingly, while understanding the Commission's efforts to unencumber AT&T of undue regulatory restraints, TRA suggests that the relaxation of the price floor be undertaken incrementally, with oversight to determine detrimental impacts on competition. TRA recommends an initial reduction to seven and a half or, at most, ten percent, followed by one or more further reductions after a showing by AT&T that it has not abused earlier decreases.

---

<sup>6</sup> See footnote 5 supra.

**"Streamlined" Regulation of AAPs:** While always wary of dramatic relaxation of regulatory oversight of AT&T, TRA cautiously supports the "streamlined" regulation of AAPs proposed by the Commission. Critically, the Commission has retained a meaningful tariff review period and introduced several key safeguards, including the subsequent submission by AT&T of actual demand and cost data, protections against evasion by AT&T of the mandated 90-day expiration date and filing by AT&T of quarterly "true-ups." TRA's position on the "streamlining" of regulation of AAPs is of course predicated on adoption by the Commission of its recommendation that a separate service category be established for AAPs. While cautiously supporting the Commission's proposals, TRA offers for the Commission's consideration, its belief that AAPs should be brought under price caps as expeditiously as possible and promptly subjected to the AAP-specific service category band advocated by TRA.

**Retention of "New Services" Rules for New AT&T Price Cap Offerings that are not AAPs:** TRA wholeheartedly endorses the Commission's view that the current "new services" rules as they apply to new AT&T price cap offerings should be maintained. As the Commission has recognized, "new services can raise complex issues, including discrimination and anticompetitive behavior, which require careful review." FNPRM at ¶ 51. Thus, as the Commission has further recognized, a 45-day notice period and a requirement for supporting information and data sufficient to demonstrate compliance with the mandate that "new services" increase net revenues for price cap services are not only appropriate, but essential. TRA urges the Commission to remain sensitive to the fact that the "streamlining" of its regulation of AAPs, which are equally useful as tools for discrimination and anticompetitive behavior, will require vigilance on its part

to avoid such abuses.

**Conforming Treatment for Exogenous Costs for AT&T to that Adopted for the LECs:** TRA completely agrees with the Commission's assessment of the need to conform the treatment of exogenous costs for AT&T to that mandated for the LECs. In particular, as entities that are completely market-driven in their pricing, TRA members applaud the Commission's recognition that exogenous treatment is only appropriate with respect to accounting changes that result in economic cost changes.


### III.

#### CONCLUSION

By reason of the foregoing, TRA supports the proposed rule and policy changes set forth in the NPRM as modified in conformance with the views of TRA voiced above.

Respectfully submitted,

#### **TELECOMMUNICATIONS RESELLERS ASSOCIATION**

By: 

Charles C. Hunter  
Kevin S. DiLallo  
Hunter & Mow, P.C.  
1620 I Street, N.W.  
Suite 701  
Washington, D.C. 20006  
(202) 293-2500

July 3, 1995

Its Attorneys